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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,578	12/21/2004	Paulus Jozef Tamis	APV31842	9890
24257	7590	05/03/2006	EXAMINER	
STEVENS DAVIS MILLER & MOSHER, LLP 1615 L STREET, NW SUITE 850 WASHINGTON, DC 20036			GERRITY, STEPHEN FRANCIS	
ART UNIT		PAPER NUMBER		3721

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/518,578	TAMIS, PAULUS JOZEF
	Examiner Stephen F. Gerrity	Art Unit 3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 December 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-11 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 21 December 2004 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \*    c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/21/04.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### **Response to Preliminary Amendment**

1. Receipt is acknowledged of a preliminary amendment, filed 21 December 2004, which has been placed of record and entered in the file.

### **Information Disclosure Statement**

2. Receipt is acknowledged of an Information Disclosure Statement, filed 21 December 2004, which has been placed of record in the file. An initialed, signed and dated copy of the PTO-1449 form is attached to this Office action.

### **Specification**

3. The disclosure is objected to because of the following informalities:
  - a. the specification lacks the section entitled "Brief Drawing Descriptions"; and
  - b. at page 3, line 8, the reference to claim 1 is improper because the written description should be complete in and of itself.

Appropriate correction is required.

### **Claim Objections**

4. Claim 6 is objected to because of the following informalities: in line 2, the word "an" should be changed to --a--. Appropriate correction is required.

### **Claim Rejections - 35 USC § 112**

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 3 and 4 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims each set forth that the can has a flexibility of more than or equal to a value (25 in claim 3, and 35 in claim 4), but the written description fails to provide a unit of measure for the flexibility. Nor does the written description set forth how the flexibility is determined or measured. Accordingly, the subject matter of claims 3 and 4 is deemed non-enabled by the written description because one of ordinary skill in the art would be unable to make and use the claimed invention.

#### **Claim Rejections - 35 USC § 102**

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 6 and 10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Emberger et al. (**US 5,958,487**).

#### **Claim Rejections - 35 USC § 103**

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 2, 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emberger et al. (US 5,958,487) in view of Heyn et al. (US 5,125,528).

The Emberger et al. reference meets all of applicant's claimed subject matter with the exception of the lid being of the easy pull off seal type adhered by a sealant to the metal cup. The Heyn et al. reference teaches that it is old and well known in the packaging art to provide a metal can (38) which includes a lid (32) being of the easy pull off seal type adhered by a sealant (40) to the metal cup (38) as seen in figure 4. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the Emberger et al. method by having substituted a lid being of the easy pull off seal type adhered by a sealant to the metal cup, as taught by Heyn et al., for the lid of Emberger et al., in order to make the lid easily removable which is readily desired by the public to avoid having to employ a can opener.

11. Claims 5, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emberger et al. (US 5,958,487) in view of Kamperman et al. (US 6,213,337).

The Emberger et al. reference meets all of applicant's claimed subject matter but does not expressly state that the can is capable of surviving a volume reduction of more than 7.5%, 10% or 15% without collapsing. The Kamperman et al. reference discloses in figure 5 that the flexible can used in a similar heat treated filled and closed can is capable of surviving a volume reduction of more than 7.5%, 10% or 15% without collapsing. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the Emberger et al. method of providing a heat treated filled and closed can to have included a can which is capable of

surviving a volume reduction of more than 7.5%, 10% or 15% without collapsing, as taught by Kamperman et al., in order for the finished product to be sold without fear of it being disfigured and thus unsellable.

### **Conclusion**

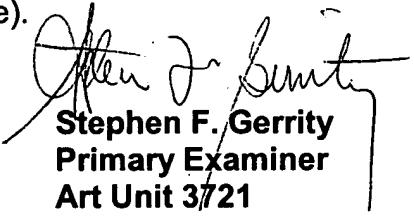
12. Claims 3 and 4 have not been treated in view of the prior art because it is difficult to ascertain the scope of the claimed subject matter. For this reason claims 3 and 4 have only been rejected under 35 USC 112, 1<sup>st</sup> paragraph.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references listed on the attached form (PTO-892) are cited to show methods of canning/packaging. All are cited as being of interest and to show the state of the prior art.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen F. Gerrity whose telephone number is 571-272-4460. The examiner can normally be reached on Monday - Friday from 5:30 - 2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**Stephen F. Gerrity**  
**Primary Examiner**  
**Art Unit 3721**

29 April 2006